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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Docket No. EE-RM-98-507

RIN: 1904-AA98

Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets

AGENCY: Department of Energy (DOE)

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Hearings

SUMMARY: The Department of Energy is today publishing an advance notice of proposed rulemaking, as required by the Energy Policy Act of 1992 (the Act), P.L. 102-486, that begins a process to determine whether alternative fueled vehicle acquisition requirements for certain private and local government automobile fleets should be promulgated under the terms of section 507(g) of the Act. The establishment of such an acquisition program is reliant on whether this program is necessary for achieving the Act's replacement fuel goals and whether this program will enable the actual realization of these goals. Thus, this notice requests comments on the replacement fuel goals set forth in section 502(b)(2) of the Act, identifying the problems with achieving the goals, assessing the adequacy and practicability of the goals, and considering all actions necessary to meet the goals. Additionally, this notice requests comments on whether DOE should propose the inclusion of alternative fueled urban bus acquisition requirements for private and local government fleets in conjunction with a fleet requirement program that may be

established under section 507(g) of the Act. This notice is intended to stimulate comments that will inform DOE's decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles.

DATES: Written comments (8 copies) must be received by DOE by July 16, 1998. Where possible, commenters should identify the specific section and question number to which they are responding.

Oral views, data, and arguments may be presented at the public hearings, which are scheduled as follows:

1. In Los Angeles, CA, beginning at 9:30 a.m. on May 20, 1998.
2. In Minneapolis, MN, beginning at 9:30 a.m. on May 28, 1998.
3. In Washington, DC, beginning at 9:30 a.m. on June 4, 1998.

The hearings will end after all persons who have requested an opportunity to speak have made oral presentations. Requests to speak at any of the hearings should be phoned to Andi Kasarsky, (202) 586-3012, and received no later than 4:00 p.m., May 18, 1998, for the Los Angeles, CA, hearing; May 26, 1998, for the Minneapolis, MN, hearing; and June 2, 1998, for the Washington, DC, hearing. Each oral presentation is limited to 10 minutes.

ADDRESSES: The hearings will be held at the following addresses:

1. Los Angeles, CA - Roybal Federal Building, 255 E. Temple Street (at Los Angeles Street), 2nd Floor Conference Room, Los Angeles, CA.

2. Minneapolis, MN - U.S. Court House, 300 South 4th Street (at 3rd Avenue), Skyway Conference Center (Room 259 - 2nd level), Minneapolis, MN.

3. Washington, DC - U.S. Department of Energy, Room 1E-245, 1000 Independence Avenue, SW, Washington, DC 20585.

Written comments should be addressed to: U.S. Department of Energy, Office of Transportation Technologies, EE-34, Docket No.EE-RM-98-507, 1000 Independence Avenue, SW, Washington, DC 20585, telephone (202) 586-3012. Copies of the public hearing transcripts, written comments received, technical reference materials mentioned in the notice, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, 1000 Independence Ave., SW, Washington, DC 20585, telephone (202) 586-3142, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The docket file material will be filed under AEE-RM-98-507.A

For more information concerning public participation in this rulemaking proceeding, see section V of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT:

Kenneth R. Katz, Office of Energy Efficiency and Renewable Energy, EE-34, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, afv-deployment@hq.doe.gov; or phone (202) 586-9171.

Vivian S. Lewis, Office of the General Counsel, GC-72, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

For information concerning the public hearings, requests to speak at a hearing, submission of written comments, and to obtain copies of materials referenced in this notice, contact Andi Kasarsky, (202) 586-3012.

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I. Introduction

A. Authority

The Energy Policy Act of 1992 (Pub. L. 104-486) authorizes DOE to pursue a rulemaking concerning alternative fueled vehicle acquisition requirements for private and local government fleets on two distinct schedules. First, section 507(b) provides for an early rulemaking, which was to be completed by December 15, 1996. As part of that rulemaking, section 507(a)(3) of the Act required DOE to publish an Advance Notice of Proposed Rulemaking (ANOPR) to begin a rulemaking process for determining whether alternative fueled vehicle (AFV) acquisition requirements for private and local government fleets are necessary to achieve the Act's energy security and other goals. 42 U.S.C. 13256(a)(3). If no rule was promulgated by December 15, 1996, then sections 507(b)(3), (c), and (e) require a later rulemaking to determine by January 1, 2000, whether vehicle acquisition requirements are "necessary," as described in section 507(e). 42 U.S.C. 13256(b)(3), (c) and (e).

DOE published an ANOPR for the purposes described in section 507(a) and (b) on August 7, 1996. 61 FR 41032. This notice was intended to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. Three hearings were held to receive oral comments on the ANOPR. They were held on September 17, 1996, in Dallas, Texas; on September 25, 1996, in Sacramento, California; and on October 9, 1996, in Washington, DC. A total of 70 persons spoke at the three hearings, and 105 written comments were received by November 5, 1996.

On April 23, 1997, DOE published a Notice of Termination stating that DOE would not promulgate regulations to implement alternative fueled vehicle requirements for certain private and local government fleets according to the early schedule of section 507(a)(1) of the Act. 62 FR 19701. As required by sections 507(b)(3), (c), and (e), DOE today begins a rulemaking under section 507(g) of the Act to determine, no later than January 1, 2000, whether alternative fueled vehicle acquisition requirements for private and local government automobile fleets under the later schedule of section 507(g) are considered "necessary" to achieve the Act's ~~A~~replacement fuel goals. (A ~~A~~replacement fuel is the non-petroleum portion of an ~~A~~alternative fuel as those terms are defined in section 301 of the Act. (42 U.S.C. 13211).)

Section 504(c) of the Act provides additional, albeit limited, rulemaking authority to develop and implement programs, *other than regulatory alternative fueled vehicle acquisition mandates*, to meet the general program goals set forth in section 502 (a) of the Act. (42 U.S.C. 13254(c).) Section 502(a) describes goals to promote availability of domestic replacement fuels to the maximum extent practicable in order to have the greatest impact in reducing oil imports, improving the Nation's economy, and reducing greenhouse gas emission. (42 U.S.C. 13252(a).) The predicate for using the rulemaking authority under section 504(c) is a determination that achievement of the specific numerical goals in section 502(b)(2) would result in a "significant and correctable" failure to meet the general program goals in section 502(a). Section 504(c) precludes DOE from promulgating rules that would mandate: production of alternative fueled vehicles; vehicle marketing or pricing practices, policies, or strategies; and production or delivery of alternative fuels. In preparing a notice of proposed rulemaking following evaluation of

comments received in response to this advance notice, DOE will be considering whether to propose rules under section 504(c).

From prior rulemaking activities under title V of the Act, DOE knows that there are diverse interests with strongly held views about the general program goals of the Act and the role that Government should play in achieving those goals. Broad acceptance of final rules setting forth an affirmative program would be desirable and, to that end, DOE may use a neutral and experienced convener under the Negotiated Rulemaking Act of 1990 to assist DOE in determining whether to develop proposed rules using consensus rulemaking procedures. 5 U.S.C. 563.

B. Program Background and Goals

The transportation sector currently accounts for approximately two-thirds of all U.S. petroleum use and roughly one-fourth of total U.S. energy consumption. A virtual one-to-one relationship exists between additional gasoline and diesel fuel consumption and America's increased use of imported oil. The gap between the transportation sector's demand for petroleum and our domestic petroleum production continues to widen. Today, the U.S. consumes 4 million barrels per day more than it produces for transportation purposes alone; that gap is projected to rise to 8 million barrels per day by the year 2010. According to the latest projections by the Energy Information Administration (EIA), the transportation sector will consume 15.8 million barrels per day of petroleum in 2010, if no significant changes are made to usage patterns and vehicle efficiency. About 8.4 million of these barrels are projected to be used by light duty

vehicles. The transportation sector represents one of the major sources of energy vulnerability for American society and the American economy today.

U.S. dependence on imported petroleum has also grown since the Act's enactment. In 1992, 41 percent of total U.S. petroleum consumption was derived from foreign sources. By 1996, imports had increased to 46 percent. EIA projects U.S. petroleum import dependence to reach approximately 52 percent of consumption by 2000 and 60 percent of petroleum consumption by 2010. Congress enacted the Act, in part, to address these energy security concerns, many of which are more critical now than at the time of passage. Titles III, IV, V, and VI of the Act contain provisions requiring DOE to establish a variety of programs aimed at displacing substantial quantities of oil consumed by motor vehicles.

Title III sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993. Since that time, approximately 30,000 alternative fueled vehicles have been acquired by the Federal fleet. Federal agencies have gained considerable experience with many types of alternative fuels and alternative fueled vehicles.

Title IV directs DOE to establish a program to certify alternative fuel technicians, acquire data about alternative fuels and alternative fueled vehicles, and establish a public information program. DOE has established a cooperative program with the auto service industry and numerous technical colleges to develop and implement national standards for certification of alternative fuel training programs.

Title IV also includes programs related to demonstrating the feasibility of the commercial application of using alternative fuels for urban buses and other motor vehicles used for mass transit. Since 1992, many fleets across the country have begun replacing their buses with

alternative fueled buses. Currently, alternative fueled transit buses are operated in thirty-eight States. According to the American Public Transit Association and the Federal Transit Association, more than 2,600 alternative fueled buses were in use in 1996. That number is estimated to increase to about 4,500 in 1998. Approximately 22 percent of new buses on order for the January 1998 through April 1998 time frame will be operated on alternative fuels. In comparison, 14 percent of new buses ordered in 1996 operated on alternative fuels.

Over the last several years, DOE has analyzed the costs and benefits of alternative fuel and AFV use in the transportation sector. A series of technical reports recorded the results of these analyses and is entitled *Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector*.[@] These reports will be placed in the public docket for this rulemaking in DOE's Freedom of Information Reading Room.

Section 502 requires DOE to establish a program to promote development and use of replacement fuels, especially domestic replacement fuels, in light duty motor vehicles. DOE is required to focus on those replacement fuels having the most impact in: reducing oil imports, improving the health of the Nation's economy, and reducing emissions of greenhouse gases. DOE is in the process of performing analytical work to guide the design of this replacement fuel demand and supply program. Section 502(b) requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10 percent of U.S. motor fuel by 2000 and 30 percent by 2010. DOE has undertaken such a study, the partial results of which have been published by DOE's Office of Policy as *Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis*. This analysis was conducted in 1994 under a set of premises (i.e., estimated future oil prices) that were more

favorable to alternative fuel use than the expectations found in the Annual Energy Outlook 1998 (DOE/EIA-0383(98)). This report is available by calling the National Alternative Fuels Hotline at 1-800-423-1DOE or 703-528-3500. A copy will be placed in the docket file for this rulemaking.

The following key results and conclusions emerged from the analysis contained in this report:

- ! For the year 2000, ten percent replacement of light duty motor fuel use with alternative and replacement fuels is feasible and appears likely with existing practices and policies.
- ! Displacing thirty percent of light duty motor fuel use by 2010 also appears feasible, however, feasibility is based on several assumptions that may not be realized without additional alternative fuel incentives.
- ! With a fully established refueling infrastructure and sufficient vehicle availability, market forces would continue to support 30 percent use of alternative fuels and would sustain even higher levels as alternative fueled vehicles assume an increasingly larger share of the total light duty vehicle population.
- ! In long-run equilibrium, making alternative fuels and alternative fueled vehicles available would provide an estimated net annual economic benefit of up to \$10.3 billion in 2010. Much of this benefit - \$4.2 billion - consists of an increase in consumer satisfaction from the availability of new classes of vehicles and less expensive fuels; the remaining \$6.1 billion reflects dollar cost savings from alternative fuel use, mainly through the reduced cost of fuel imports.
- ! Benefits from reduced emissions of criteria pollutants are estimated to be up to \$3.7 billion annually.

Although this analysis indicates that a free market could sustain a large volume of alternative fuel use, it does not appear at the present that the market will move toward such a scenario without Government action. The report states that in order to realize any substantial use of alternative fuels by 2010, the Federal and/or State governments will have to take steps soon to encourage the increased use of alternative fuels and vehicles.

DOE is also required by section 506 to prepare a Technical and Policy Analysis of various issues related to replacement fuels and alternative fueled vehicles for submission to the President and Congress. On October 27, 1997, DOE published a Notice of Availability and Request for Comments (62 FR 55622) on a proposed analysis on these issues, prior to its final transmission to the President and Congress. Comments were due to DOE by January 26, 1998. Copies of the proposed Technical and Policy Analysis may be obtained from the National Alternative Fuels Hotline, 9300 Lee Highway, Fairfax, VA 22301-1207, (800) 423-1DOE, or electronically from the Office of Energy Efficiency and Renewable Energy's Transportation Technologies website at: <http://www.ott.doe.gov/office.rules.html>. DOE is required by section 506(c) to preserve all comments received on the analysis for use in required rulemaking proceedings under section 507, including the rulemaking, covered in today's notice, for determining whether local government and private fleets should be required to acquire alternative fueled vehicles. Public comments on the section 506 Technical Analysis can be reviewed at DOE's Freedom of Information Reading Room under Docket Number EE-NOA-97-506. Currently, twelve written comments have been received on the analysis.

The preliminary partial results of the section 506 Technical Analysis indicate that the potential use of replacement fuels sustainable by the market could be as high as 30 to 38 percent

under various scenarios and ultimately could be greater than 50 percent. In order to reach these levels of replacement fuel use, major transitional impediments would have to be overcome, including changes in the relative fuel/vehicle prices to consumers. Changes to the price that customers pay for alternative fueled vehicles and alternative fuels may require the establishment of additional financial, and non-financial, incentives both for the end user and for the vehicle and fuel providers.

For example, the analysis states that the Act's suggested goals of displacing 10 percent of transportation fuels in the year 2000 and 30 percent in the year 2010 would require that AFV sales:

- , grow to between 35 and 40 percent of total new light duty vehicle sales by 1999 to meet the 2000 goal; and
- , stay in the range of 30 to 38 percent to build an AFV population sufficiently large enough to meet the 2010 goal.

If the 30 percent goal applied to year 2020, instead of 2010, the analysis states that AFV growth would have to:

- , double every year between 1995 and 2000, going from approximately 30,000 to 500,000 sales per year;
- , increase by 50 percent per year to 4,000,000 in the period from 2001 through 2005; and
- , remain at a constant 32 percent of total light duty vehicle sales in the period from 2005 through 2010.

Under this scenario, the AFV population in 2020 would be large enough so that 30 percent of light duty vehicle motor fuel would be replacement fuel. This scenario is believed to be

more representative of new vehicle technology market introduction generally, than the growth paths necessary to meet the Act's suggested goals. However, the draft analysis indicates that it is unlikely that the estimated growth in alternative fueled vehicles and alternative fuel use will occur solely due to the Federal, State, local government, and fuel provider alternative fueled vehicle acquisition requirements of the Act. The draft analysis suggests that new policies may need to be established before these projections of alternative fuel and alternative fueled vehicle use can be realized. These policies could result in additional grant programs, budget increases for existing grant programs, additional financial and non-financial incentives, additional excise tax changes, and/or the establishment of new programs.

In addition to the hearings, reports and analyses required by Title V, DOE held two stakeholder forums in 1997 for the purpose of discussing the replacement fuel goals, the potential private and local government fleet acquisition requirements, and the issue of mandates versus incentives. These forums took place on June 24, 1997, in Long Beach, CA, and on November 19, 1997, in Dallas, TX. Issues discussed at these forums included the current availability and use of alternative fuels and alternative fueled vehicles; existing governmental incentives, both financial and non-financial; taxes on alternative fuels; alternative fuel economics; and the need for additional programs and incentives that will catalyze the alternative fuels market. In preparation for the Dallas forum, DOE produced a "Fleet Forum White Paper" that summarized the current status of these issues, characterized the types of incentives and provided a basis for discussion. This document will be placed in the docket for this rulemaking and can be reviewed at DOE's Freedom of Information Reading Room.

Pursuant to section 505 of the Act, 42 U.S.C. 13255, DOE is promoting voluntary use of alternative fueled vehicles through its Clean Cities Program. Under this program, DOE joins with local governments and organizations in public/private partnerships aimed at developing markets for alternative fueled vehicles. The program aims to bring together enough participants in each local area to reach the necessary volume of alternative fueled vehicle use to justify installation of refueling infrastructure and other joint facilities, as well as to promote other forms of cooperation. As of March 1998, 61 U.S. communities have signed agreements to participate.

Title V also contains non-discretionary alternative fueled vehicle acquisition requirements. Sections 501 and 507(o) of the Act require certain alternative fuel provider and State government fleets to include increasing percentages of alternative fueled vehicles in their annual acquisitions of new light duty vehicles. DOE published a final rule to implement these vehicle acquisition requirements on March 14, 1996. 61 FR 10621. As a result of these requirements, alternative fuel provider and State fleets have reported, to date, the acquisition of approximately 5,000 alternative fueled vehicles to DOE. This quantity is expected to increase after additional reports are received and tabulated.

The use of alternative fueled vehicles, alternative fuels, and replacement fuels has been steadily growing since 1992. According to the EIA report entitled, "Alternatives to Traditional Transportation Fuels 1996" (December 1997), the following estimates apply in respect to the use of alternative fueled vehicles, alternative fuels, and replacement fuels:

, More than 380,000 alternative fueled vehicles were in use in 1997; a 51 percent increase since 1992.

- , An additional 50,000 alternative fueled vehicles are expected to be in use by the end of 1998.
- , From 1992 to 1996, gasoline-equivalent gallon consumption of alternative and replacement fuels increased by 76 percent, while consumption of traditional fuels increased just 10 percent.
- , From 1992 to 1996, alternative and replacement fuel consumption increased from 2,106,000 to 3,707,000 billion gasoline-equivalent gallons, while consumption of traditional fuels increased from 134,000,000 to 148,000,000 billion gasoline-equivalent gallons.
- , United States consumption of alternative fuels is expected to grow by more than 45 million gasoline-equivalent gallons from 1996 to 1998.

The availability of alternative fueled vehicles from Original Equipment Manufacturers (OEMs) has been increasing steadily. Several types of alternative fueled vehicles, including light-, medium-, and heavy-duty vehicles are available from OEMs. Alternative fueled vehicles are available from Chrysler, Ford, General Motors, Honda, and Toyota. Manufacturers have announced plans for new offerings of alternative fueled vehicles in the next few years. Both Chrysler and Ford announced that they intend to produce large numbers of flexible-fuel vehicles (including sedans, minivans, and compact pickup trucks) that are capable of operating on E85, a blend of 85 percent ethanol and 15 percent gasoline, and/or gasoline. Currently, available model types include compact and full-size pickup trucks; cargo and passenger vans; minivans; compact sport utility vehicles; delivery trucks; and subcompact, compact, mid-size, and full-size passenger cars. Available fuel types include 85percent ethanol (E85), 85percent methanol (M85),

compressed natural gas (CNG), liquefied natural gas (LNG), propane (liquefied petroleum gas or LPG), and electricity.

C. Required Rulemaking

This advance notice of proposed rulemaking is the first step in a required rulemaking under section 507(g) of the Act for determining whether local government and private fleets (other than alternative fuel providers subject to section 501) should be required to acquire alternative fueled vehicles. 42 U.S.C. 13257(g). A DOE decision to impose alternative fueled vehicle acquisition requirements on private and local government fleets is dependent on a determination that such requirements are "necessary" to achieve the replacement fuel goals of section 502(b)(2)(B), or as modified by DOE under section 504 or 507(e), and that the requirements would enable the actual realization of these goals. If the replacement fuel goals, as modified, cannot be met by the imposition of these acquisition requirements, the Act does not permit DOE to go forward with such a program.

Such a fleet mandate would cover local government and private fleets (excluding alternative fuel provider fleets covered by section 501 of the Act) of 20 or more light duty motor vehicles (including passenger cars and trucks under 8500 lbs. gross vehicle weight rating), which are:

- ! centrally fueled or capable of being centrally fueled;
- ! operated primarily within a metropolitan statistical area with a population of at least 250,000 according to the 1980 census; and

- ! owned, leased, operated or otherwise controlled by an entity which owns or operates 50 or more such vehicles in the United States.

Various classes of light duty motor vehicles are excluded from the basis for determining coverage. Excluded categories are listed in section 490.3 of DOE's final rule for State government fleets and certain alternative fuel providers. 10 CFR part 490. Appendix A to subpart A of 10 CFR part 490 provides a list of the 125 metropolitan statistical areas with a population of at least 250,000, according to the 1980 Census.

The statutory authority for the required rulemakings is described below. Each may require a separate rulemaking action, or may be combined into a single rulemaking. Additionally, a third optional rulemaking, as described below in section D, may require a separate rulemaking, or may be included in this single rulemaking action.

1. *Advance notice of proposed rulemaking.* Section 507(c) of the Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: (a) evaluating progress toward the goals of producing replacement fuels to replace, on an energy equivalent basis, at least 10 percent of motor fuel consumption by the year 2000 and at least 30 percent by the year 2010; (b) identifying the problems with achieving those goals; (c) assessing the adequacy and practicability of those goals; and (d) considering all actions necessary to achieve those goals. Today's notice is issued to comply with this statutory requirement.

2. *Later rulemaking.* Sections 507(e) and (g) of the Act require DOE to initiate a rulemaking to determine if the statutory conditions for a later mandate, beginning in model year

2002 or thereafter, are met. In order to determine that a mandate is ~~Anecessary,~~section 507(e) of the Act, 42 U.S.C. 13257(e), requires that DOE make the following findings by rule:

- (a) The goal of replacement fuel use described in section 502(b)(2)(B), or as modified by section 504, is not expected to be actually achieved by 2010 by voluntary means or pursuant to Title V or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A); and
- (b) Such goal is practicable and actually achievable within periods specified in section 502(b)(2) (or such other date as is established under section 504) through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

Section 507(g) provides the following alternative fueled vehicle acquisition schedule for a program established by this later rulemaking:

- 20 percent of the light duty motor vehicles acquired in model year 2002;
- 40 percent of those acquired in model year 2003;
- 60 percent of those acquired in model year 2004; and
- 70 percent of those acquired in model year 2005 and thereafter.

Under section 507(e)(2), these percentages can be reduced by rule, to no less than 10 percent.

Additionally, section 507(g)(2) allows DOE the option of starting the acquisition schedule later than model year 2002.

If DOE were eventually to determine under section 507(f) that a fleet requirement program is unnecessary, DOE would be required by section 509 of the Act to submit to Congress recommendations for possible requirements or incentives applying to fuel suppliers, vehicle suppliers, and motorists that would achieve the Act's fuel replacement goals.

D. Law Enforcement Vehicle and Urban Bus Optional Rulemakings

Section 507(k)(1) allows the Secretary, by rule, to include fleets of law enforcement vehicles in a fleet requirement program established under section 507(g), if it is determined that this inclusion would contribute to achieving the goal described in section 502(b)(2)(B) (or such other date as is established under section 504). 42 U.S.C. 13257 (k)(1). A DOE decision to include law enforcement motor vehicles in a fleet requirement program established under section 507(g) is dependent upon a determination that this inclusion will not hinder the use of motor vehicles for law enforcement purposes. Only one rulemaking may be initiated under section 507(k)(1). Under section 507(k)(3), this rulemaking may not occur unless a rulemaking is carried out under section 507(g).

Many law enforcement agencies currently are using alternative fueled vehicles satisfactorily. In some cases, alternative fuels can reduce life-cycle operation costs for high-mileage patrol vehicles. The operational characteristics of many administrative law enforcement vehicles create a good match with those of alternative fueled vehicles. However, DOE recognizes that many law enforcement agencies have unique operational practices and requirements that would reduce opportunities for alternative fueled vehicles. DOE is interested in receiving comments as to whether acquisition requirements for alternative fueled law enforcement motor

vehicles should be included in a fleet requirement program and how this program should be structured, including the program start date and acquisition percentages.

Section 507(k)(2) allows the Secretary, by rule, to include new urban buses, as defined by the Environmental Protection Agency (EPA), under title II of the Clean Air Act, in a fleet requirement program established under section 507(g), if it is determined that this inclusion would contribute to achieving the goal described in section 502(b)(2)(B) (or such other date as is established under section 504). 42 U.S.C. 13257 (k)(2). An urban bus is defined by EPA as:

AA heavy-duty diesel-powered passenger-carrying vehicle with a load capacity of fifteen or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or tokens rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., rest rooms, large luggage compartments, and facilities for stowing carry-on luggage. The useful life for urban buses is the same as the useful life for other heavy-duty diesel engines.@ 40 CFR 86.091-2.

A DOE decision to include new urban buses in a fleet requirement program established under section 507(g) is dependent upon a determination that this inclusion will be consistent with energy security goals and the needs and objectives of encouraging and facilitating the greater use of such urban buses by the public, taking into consideration the impact of such application on public

transit entities. Only one rulemaking may be initiated under section 507(k)(2). Under section 507(k)(3), this rulemaking may not occur unless a rulemaking is carried out under section 507(g).

II. General Issues Relating to Replacement Fuel Goals

As explained in Section I of this notice, section 507(c) of the Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: evaluating progress toward the replacement fuel goals of producing replacement fuels to replace, on an energy equivalent basis, at least 10 percent of motor fuels consumption by the year 2000 and at least 30 percent by the year 2010 (or as modified under section 504); identifying the problems with achieving those goals; assessing the adequacy and practicability of those goals; and considering all actions necessary to achieve those goals.

Section 502(a) lays out a specific goal for a ~~A~~Replacement Fuel Supply and Demand Program~~@~~ to promote the development and use in light duty motor vehicles of domestic replacement fuels to substitute for imported petroleum motor fuels to the maximum extent practicable. 42 U.S.C. 13252.

In designing the program, DOE is to focus on those replacement fuels having the most impact in reducing oil imports, improving the health of the Nation's economy, and reducing emissions of greenhouse gases. Section 502(b)(2) further requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10 percent of U.S. motor fuel by 2000 and 30 percent by 2010. 42 U.S.C. 13252(b)(2).

DOE invites comments on the following general issues related to achieving the Act's suggested replacement fuel goals:

1. Can the goal of replacing 30 percent of motor fuel consumption be achieved by 2010?

What are the problems with achieving the goal?

2. If the 30 percent goal cannot be achieved by 2010, then what is an achievable goal in terms of percentage and time frame?

3. What methods or criteria should DOE use to assess the adequacy and practicality of specific replacement fuel goals (i.e., the 10 percent and 30 percent targets) or for determining whether the goals should be modified?

4. What type of a replacement fuels program should DOE establish that would maximize usage of alternative fuels, replacement fuels, and energy efficient vehicles? How should such a program be structured and implemented?

5. What types of programs could be employed in combination with, or in place of, mandated fleet AFV acquisitions to help achieve the 30 percent replacement fuel goal in 2010?

6. What specific types of incentives, should be employed to help achieve the 30 percent replacement fuel goal in 2010? What form should these incentives take (e.g., financial, non-financial)? Who should benefit from these incentives (e.g., consumers, fleet operators, vehicle manufacturers, fuel providers, equipment suppliers) and how?

7. How should the potential for dramatic changes in the price and availability of petroleum (e.g., due to a sharp curtailment in world petroleum supplies) be factored into the design of a replacement fuels program?

8. How should DOE estimate the fuel replacement impacts from other Federal or State alternative fueled vehicle mandates, voluntary commitments, use of dual fueled vehicles (that operate only part time on alternative fuels), and other measures?

9. What methods are currently being used by fleets for tracking the use of alternative fuel in dual fueled vehicles? How should DOE use this data to verify alternative fuel use?

10. How should DOE encourage alternative fuel use in dual fueled vehicles?

11. What factors should DOE take into account when estimating the impact of replacement fuels on reducing oil imports, improving the health of the Nation's economy, and reducing greenhouse gas and other emissions?

III. Issues Related to Fleet Requirement Determinations

Sections 507(e) and (g) require that DOE publish a rule in the Federal Register, no later than January 1, 2000, for the purpose of determining whether a fleet requirement for local government and private fleets to acquire alternative fueled vehicles is necessary. Such a program shall be considered necessary if the Secretary finds that:

(a) the goal of replacement fuel use described in section 502(b)(2)(B) (or as modified under section 504) is not expected to be actually achieved by 2010 (or other such date as established under section 504) by voluntary means or pursuant to Title V or any other law without such a fleet requirement program; and

(b) the goal (or as modified under section 504) is practicable and actually achievable through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving the goal.

Section 507(e)(2) requires that the rule published under section 507(g) also must modify the goal described in section 502(b)(2)(B) and establish a revised goal pursuant to section 504 if the Secretary determines that the 30 percent motor fuel replacement goal by 2010 is inadequate or

impracticable, and not expected to be achieved. The goal as modified and established is applicable in making these findings.

Under section 507(e)(2), if DOE modifies the suggested 30 percent motor fuel replacement by 2010 goal, it also may modify the annual fleet acquisition requirements with the minimum percentage being no less than 10 percent of new light duty vehicle acquisitions.

Likewise, section 507(g)(2) provides that DOE may, by rule, establish a lesser AFV acquisition requirement for any model year and that DOE may establish a fleet requirement program start date later than 2002. However, DOE may not establish acquisition percentages greater than those in section 507(g)(1).

Regarding local government entities, section 507(i)(1)(C) provides an exemption for a local government entity if it can demonstrate to DOE that a fleet requirement program, under section 507(g), would pose an unreasonable financial hardship on the entity. The Act does not provide a similar exemption for private fleets that may be covered. However, for all fleets, sections 507(i)(1)(A) and (B) allow an exemption if the fleet demonstrates that alternative fueled vehicles that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition or the alternative fuels that meet the normal requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to operated.

DOE seeks comment on the following issues that may be relevant to any future DOE decision to propose alternative fueled vehicle acquisition requirements for local government and private fleets:

1. If a fleet requirement program is established, should the acquisition percentages be the same as those provided in section 507(g) for the acquisition of new light duty motor vehicles or should a different acquisition schedule apply? If a different schedule should apply, what should the schedule look like (e.g., program start date, acquisition percentages)?

2. If the Act's suggested goal of replacing 30 percent of the motor fuel used by 2010 is impracticable and not expected to be achieved, what should the modified fuel replacement goal be in terms of percentage replacement and the year the goal is expected to be achieved?

3. What methods or criteria should DOE use to determine the contribution of a fleet requirement program towards meeting the fuel replacement goal as modified?

4. What types of programs should be established, instead of a fleet requirement program, that will result in market penetration of alternative fueled vehicles and alternative fuels to the maximum extent practicable? And what market penetration(s) would be possible with the establishment of these programs?

5. What types of voluntary and incentive measures should be undertaken, either in conjunction with fleet AFV requirements or in lieu of such mandates, such as a program that awarded credits for the amount of petroleum displaced or replaced, that would encourage progress toward the fuel replacement goals?

6. DOE is required by section 507(l) to take into consideration the following factors: energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts including impacts on fleets, workers, and consumers, such as users of the alternative fuels for other (non-transportation) purposes, and the availability of alternative fuels and alternative fueled vehicles.

What bearing or weighting factor, if any, should these factors have on a DOE determination as to whether it should impose alternative fueled vehicle acquisition requirements on local government and private fleets?

IV. Issues Related to the Inclusion of Urban Buses in a Fleet Requirement Program

DOE seeks comment on the following issues that may be relevant to any future DOE decision to propose the inclusion of alternative fueled urban bus acquisition requirements for local government and private fleets under a fleet requirement program that may be established under section 507(g) of the Act:

1. What methods or criteria should DOE use in determining whether the inclusion of alternative fueled urban buses in a fleet requirement program under section 507(g) would contribute to achieving the goal of section 502(b)(2)(B) (or other such goal as modified by section 504)?

2. What methods or criteria should DOE use in determining whether the inclusion of alternative fueled urban buses in a fleet requirement program will be consistent with the energy security goals and the needs and objectives of encouraging and facilitating the greater use of alternative fueled buses by the public?

3. What factors should DOE take into consideration when estimating the impact on public transit entities of a program requiring the acquisition of alternative fueled buses?

4. If a fleet requirement program is established, should requirements for the acquisition of alternative fueled urban buses apply to both local government and private fleets? Or, should requirements only apply to local government fleets?

5. Should the acquisition percentages be the same as those that apply to local government and private fleets for new light duty vehicles under section 507(g) or should a different acquisition schedule apply? If a different schedule should apply to the acquisition of alternative fueled urban buses, what should the schedule look like (e.g., program start date, acquisition percentages)?

6. What types of exemptions and/or exclusions should be included in such a fleet requirement program?

V. Review and Analysis Requirements

DOE provided to the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA) a copy of this notice for comment. At the proposal stage for this rulemaking, DOE and OIRA will determine whether this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Were DOE to propose alternative fueled vehicle acquisition requirements for local government and private fleets, the rulemaking could constitute an economically significant regulatory action, and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et

seq.; the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.; and the Unfunded Mandates Act of 1995, Pub. L. 104-4; and the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

VI . Public Comment Procedures

a. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. Individual fleet operators; representatives of trade groups; local governments; consumers of fleet services; vehicle manufacturers; fuel providers, including producers; distributors and service station operators; associations; States or other governmental entities; and others are urged to submit written comments on the proposal. DOE also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this notice.

DOE has established a period of 90 days following publication of this notice for persons and organizations to comment on this advance notice of proposed rulemaking. All public comments, public hearing transcripts, and other docket material will be available for review and copying in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice. The docket file material will be filed under AEE-RM-98-507.@

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below. Where possible, commenters should identify the specific section and question number to which they are responding.

Comments (8 copies) should be labeled both on the envelope and on the documents, "Fleet AFV Acquisition Requirements Rulemaking (Docket No. EE-RM-98-507)," and must be received by the date specified at the beginning of this notice. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 3 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

c. Public Hearings

1. *Procedure for Submitting Requests to Speak.* The dates, times and places of the public hearings are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a request for an opportunity to make an oral presentation at the public hearings. Requests may be telephoned to the telephone number given at the beginning of this notice. The person making the request should give a telephone number where he or she may be contacted. Persons will be notified by DOE as to the approximate time they will be speaking.

Each person is requested to submit 8 copies of his/her statement at the registration desk prior to the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements by calling (202) 586-3012 in advance.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at the hearings, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearings. Each presentation is limited to 10 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 553, and section 501 of the DOE Organization Act, 42 U.S.C. 7191.

At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations. Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcripts from the transcribing reporter.

Issued in Washington, DC, on April 8, 1998.

Dan W. Reicher
Assistant Secretary
Energy Efficiency and Renewable Energy